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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10780,429	02/17/2004	Lawrence Germano Ponsi	920229-902699	1562
23644	7590	01/31/2007	EXAMINER	
BARNES & THORNBURG LLP			SHAPIRO, JEFFERY A	
P.O. BOX 2786			ART UNIT	PAPER NUMBER
CHICAGO, IL 60690-2786			3653	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/31/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/780,429	PONSI ET AL.
	Examiner	Art Unit
	Jeffrey A. Shapiro	3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 December 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 9 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Dearing et al (US 2002/0183882).

As recited in Claim 1, Dearing discloses a cabinet (230) having at least one compartments (see figure 6 and paragraph 45, first five lines), a sensor for each product compartment (262-267), as shown in figures 6 and 10 and a processor (256) connected to each sensor.

Dearing further discloses an aging indicator, at paragraph 57, which indicates that an expiration message is sent to the micro-warehouse (MW 36) system (25), which is a controller/server. See paragraph 40. Each micro-warehouse is represented as a "client" on server (27), said server handling multiple clients/MW's. See paragraph 44, last 5 lines and paragraph 45, first 5 lines. Since each MW is construed as a single compartment, and each MW is disclosed as having a separate aging indicator, Dearing is therefore considered to meet Applicant's limitation of a "separate aging indicator associated with each product compartment". Multiple signals are transmitted concerning the condition of the items located in the MW, which can be a freezer,

refrigerator, or other storage device. Each of the processors can monitor the status of each item concerning data such as temperature.

Note that it is inherent that Dearing has a temperature controller.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 3, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing. Dearing describes the product storing and dispensing system described above. Dearing does not expressly disclose that the processors are optical or infrared based. However, Dearing does teach the use of various sensors, such as proximity sensor (40) or light curtains. Optical and infrared detectors are considered to be functional equivalents of each other that one ordinarily skilled in the art would have found obvious to use to sense the presence of a product in a compartment. Also, Dearing at paragraph 5, lines 7-10 describes use of RF tags having a frequency between the audible and infrared range. Therefore, it would have been obvious to use sensors based on any particular radiation-optical, radio, or infrared as functional equivalents of each other.

5. Claims 4-6, 11, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Bastian, II et al (US 6,650,225 B2). Dearing discloses the system described above. Dearing does not expressly disclose, but

Bastian discloses a display (101), illustrated at figure 7, located at each product compartment/bay.

Regarding Claim 14, note that Bastian teaches using various visual indicators, for example, in figures 2e and 7. See also col. 5, line 42-col. 6, line 54 of Bastian. Col. 6, lines 41-54 discuss a configuration in which two displays which display different information, which can be construed as indicators, is displayed. Additionally, figure 2e illustrates indicator light (33) which is a third indicator/display of information. Note that figures 2f and 2g and col. 6, line 61-col. 7, line 9 illustrate and discuss display panel (35f) which can incorporate information from any light indicators, thereby supplanting them.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have located a display/indicator at each compartment/bay of Dearing's microwarehouse, and to have used a combination of three light indicators/displays or a functional equivalent thereof.

The suggestion/motivation would have been to indicate information about a particular bay to an operator of the microwarehouse. See Bastian abstract as well as col. 5, line 42-col. 6, line 54, col. 6, lines 41-54, figures 2f and 2g and col. 6, line 61-col. 7, line.

Regarding Claims 14 and 15, note that it is considered to be expedient for one ordinarily skilled in the art to have three separate displays/indicators to display separate information such as "not ready", "ready" and "select first" indicators. Bastian provides

teaching, as cited above, concerning the use of several indicators and displays to communicate several pieces of information about the bay they are associated with.

6. Claims 7-9, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Chen (US 6,930,296 B2). Dearing discloses the system described above. Dearing does not expressly disclose, but Chen discloses heating means (30) for heating items.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have located a display at each compartment/bay of Dearing's microwarehouse.

The suggestion/motivation would have been to indicate information about a particular bay to an operator of the microwarehouse. See Bastian abstract, for example.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dearing in view of Black, Sr. et al (US 5,522,310). Dearing discloses the system described above. Dearing does not expressly disclose, but Black discloses a thermocouple (20) for determining temperature in a freezer. Said thermocouple is also taught as being used to gather data to determine product spoilage. See col. 5, lines 46-65 and col. 12, lines 60-64.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to have used a thermocouple to detect temperature in a product bay of Dearing's product storage area, since Dearing discusses use of a temperature sensor at paragraph 40, line 6, and a thermocouple is just such a temperature sensor.

***Response to Arguments***

8. Applicant's arguments filed 12/29/07 have been fully considered but they are not persuasive. Applicant asserts that Dearing does not disclose a separate aging indicator. A message, as described by Dearing at paragraph 57, concerning the expiration of items is considered to be an indicator of aging. Again, since each MW is construed as a single compartment, and each MW is disclosed as having a separate aging indicator, and Dearing's network is designed to include multiple clients in the form of MW's, Dearing is therefore considered to meet Applicant's limitation of a "separate aging indicator associated with each product compartment". Regarding Claims 11, 14, 15, Bastian provides motivation and suggestion for one ordinarily skilled in the art to either use three separate indicators to indicate three separate pieces of information, such as the current state, of an individual compartment, or to incorporate all three indicators into a single display having three indication areas within the display. See again col. 6, line 61-col. 7, line 9.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (571)272-6943. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick H. Mackey can be reached on (571)272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS *Jas*

January 26, 2007

*PM*  
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